

REMARKS

Applicants request favorable reconsideration of this application in view of the following remarks. Of claims 1-34 that were pending in the application, claims 6, 7, 9-12, 15-18, 20, and 23-25 were previously withdrawn and claims 1, 13, 14, 19, 21, 22, 26-29, 33 and 34 were rejected in the Office Action. Applicants appreciate the allowance of claims 2-5, 8, and 30-32. No amendments have been made in this Reply and, therefore, reconsideration of the outstanding rejection is respectfully requested.

1. Rejection of Claims 1, 13, 14, 19, 21, 22, 26-29, 33, and 34

The Examiner rejected claims 1, 13, 14, 19, 21, 22, 26-29, 33, and 34 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,010,478 ("Bellhouse-I"). For the following reasons, Applicants respectfully traverse this rejection.

Preliminarily, as discussed in the previous Amendment and Reply filed January 7, 2005, this rejection could be overcome by showing that the invention described in Bellhouse-I was not "by another," as required by § 102(e). However, Applicants note that the sealed capsule 8 to which the Examiner cited was previously disclosed as a capsule 28 in WO94/24263 ("Bellhouse-II") (*see* Figs. 1 and 8) and in its related U.S. Patent No. 5,630,796 ("Bellhouse-III") (*see* Fig. 1). Bellhouse-II and Bellhouse-III were submitted in the Information Disclosure Statement ("IDS") filed on July 26, 2003, which the Examiner acknowledged in the Office Action mailed April 22, 2004. Accordingly, as Bellhouse-II was published on October 27, 1994 and as Bellhouse-III issued on May 20, 1997, both references qualify as prior art under 35 U.S.C. § 102(b). However, for ease of comparison, the rejection will be addressed with respect to Bellhouse-I.

Independent claims 1, 14, 22, and 26 all recite a "capsule" or an "intermediate portion" that includes first and second members. One of the first and second members "is movable *relative* to the other member" such that "upon said *relative movement* a passage is formed *through* said capsule *and* said pocket is *opened* to expose the dose for entrainment in fluid flowing through said passage." As hereafter explained in detail, Bellhouse-I fails to teach or suggest such a capsule/intermediate portion.

The capsule 8 disclosed in Bellhouse-I is best illustrated in Figure 1, which shows a pocket formed between two rupturable membranes 9, 9. *See* Bellhouse-I at col. 6, line 67 – col. 7 line 5. In use, the capsule 8 reacts as follows. When an internal pressure of a chamber 5, which is behind the capsule 8, rises above a threshold, the upstream membrane 9 bursts, thereby opening the pocket in the capsule 8. Subsequently, the downstream membrane 9

bursts, thereby creating a passage for the particles P through the capsule 8. *See* col. 7, lines 27-31.

The Office Action asserts that the capsule 8 is analogous to the first member and that one of the membranes 9 is analogous to the second member. Preliminarily, as the membranes 9, 9 are part of the capsule 8 (*see* col. 7, lines 2-4), Applicants assume that the Examiner intended to analogize the ring-shaped annulus of the capsule 8 to the first member. In addition, Applicants assume that the Examiner also intended to analogize the upstream membrane 9 to the second member. With this understanding, for the following reasons the rejection can not stand.

First, Applicants note that the upstream membrane 9 and the ring-shaped annulus (8) do not form a “closed pocket,” as recited in independent claims 1, 14, 22, and 26. Rather, the closed pocket in Bellhouse-I is formed by all three of the upstream membrane 9, the ring-shaped annulus (8), and the downstream membrane 9.

Second, when gas is presented to the upstream side of Bellhouse-I’s capsule, the upstream membrane 9 bursts. Although the bursting of the upstream membrane 9 “opens the pocket,” defined by the three members, the bursting of the upstream membrane 9 does not form a passage “through” the capsule. Moreover, even assuming, *arguendo*, that the Office Action intended to analogize the downstream membrane 9 to the second member, the rejection would still be improper; although the bursting of the downstream membrane 9 creates a passage through the capsule, the bursting of the downstream membrane 9 does not open the pocket (*i.e.*, the pocket is already open due to the previous bursting of upstream membrane 9).

In addition to the foregoing, assuming, *arguendo*, that Office Action intended to assert that a first membrane 9 moves relative to a second membrane 9 (*i.e.*, assuming that the “8” in the Office Action was a typographical error), the movement of the first membrane 9 does not both create a passage “through” the capsule 8 and “open” the pocket. Rather, the movement of the upstream membrane 9 opens the capsule 8 and the movement of the downstream membrane creates a passage through the capsule, *i.e.*, it is the movement of both membranes 9, 9, that creates a passage “through” the capsule 8 and “opens” the pocket.

In sum, Bellhouse-I does not disclose any single member that, when it moves, both forms a passage through the capsule and opens the pocket. The only movable members in Bellhouse-I are the membranes 9, 9; the upstream membrane 9 serves to open the pocket (but does not form a passage through the capsule) whereas the downstream membrane 9 serves to form a passage through the capsule (but does not open the pocket).

In contrast, independent claims 1, 14, 22, and 26 recite that the movement of one member (relative to the other member) creates the passage “through” the capsule (or intermediate portion) and “opens” a pocket. An example of this recited movement is clearly shown in Figures 16/17 (*i.e.*, the figures corresponding to the elected embodiment). Figures 16/17 show the movement of the plug 79 relative to the capsule housing 78. In the plug’s intermediate position (not shown) a passage is created *through* the capsule housing 78, thereby *opening* a pocket 84; this passage is similar to that shown for the non-elected embodiments shown in Figures 2/3 and 8/9.

For at least the foregoing reasons, it is clear that Bellhouse-I fails to teach or suggest that the movement of one member creates a passage through the capsule and opens a pocket. As a result, Bellhouse-I fails to teach or suggest each of the limitations of independent claims 1, 14, 22, and 26 and, therefore, Bellhouse-I can not be used to reject these claims, or any claim dependent thereon, under 35 U.S.C. § 102(e). Moreover, as claims 13 and 29 depend from claim 1, as claims 19, 21, and 33 depend from claim 14, as claim 34 depends from claim 22, and as claims 27 and 28 depend from claim 26, each of these dependent claims is also allowable over Bellhouse-I, without regard to the other patentable limitations recited therein. Accordingly, Applicants respectfully request a withdrawal of the rejection of claims 1, 13, 14, 19, 21, 22, 26-29, 33, and 34.

2. Previously Withdrawn Claims

As withdrawn claims 10-12 depend from allowable claim 1, as withdrawn claim 9 depends from allowable claim 2, as withdrawn claims 6 and 7 depend from allowable claim 4, and as claims 15-18, 20, and 23-25 depend from allowable claim 14, each of these dependent/withdrawn claims is also allowable. Accordingly, when issuing a Notice of Allowance, the Examiner is requested, under 37 C.F.R. § 1.141 and M.P.E.P. § 809.04, to reenter and allow claims 6, 7, 9-12, 15-18, 20, and 23-25.

CONCLUSION

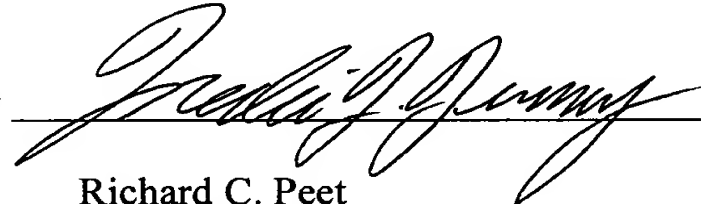
For the aforementioned reasons, 1-34 are now in condition for allowance. A Notice of Allowance at an early date is respectfully requested. The Examiner is invited to contact the undersigned if such communication would expedite the prosecution of the application.

Respectfully submitted,

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By



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THE COMMISSIONER IS HEREBY AUTHORIZED TO CHARGE ANY ADDITIONAL FEES WHICH MAY BE REQUIRED REGARDING THIS APPLICATION UNDER 37 C.F.R. §§ 1.16-1.17, OR CREDIT ANY OVERPAYMENT, TO DEPOSIT ACCOUNT NO. 19-0741. SHOULD NO PROPER PAYMENT BE ENCLOSED HEREWITH, AS BY A CHECK BEING IN THE WRONG AMOUNT, UNSIGNED, POST-DATED, OTHERWISE IMPROPER OR INFORMAL OR EVEN ENTIRELY MISSING, THE COMMISSIONER IS AUTHORIZED TO CHARGE THE UNPAID AMOUNT TO DEPOSIT ACCOUNT NO. 19-0741. IF ANY EXTENSIONS OF TIME ARE NEEDED FOR TIMELY ACCEPTANCE OF PAPERS SUBMITTED HEREWITH, APPLICANT HEREBY PETITIONS FOR SUCH EXTENSION UNDER 37 C.F.R. § 1.136 AND AUTHORIZES PAYMENT OF ANY SUCH EXTENSIONS FEES TO DEPOSIT ACCOUNT NO. 19-0741.